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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/742,101	12/22/2000	Kelly R. Krake		7529

7590 03/14/2002
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6 Schoolhouse Way
Dix Hills, NY 11746

EXAMINER

VERBITSKY, GAIL KAPLAN

ART UNIT	PAPER NUMBER
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2859

DATE MAILED: 03/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/742,101

Applicant(s)
Krake et al.

Examiner
Gall Verbitsky

Art Unit
2859



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, and 8-10 is/are rejected.
- 7) ☒ Claim(s) 3-7 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirements.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2(2pgs) 20) ☐ Other:

Art Unit: 2859

DETAILED ACTION

Claim Objections

1. Claims 3 and 7-8, 10 are objected to because of the following informalities:

Claim 3: "said marking elements" in line 3 lacks antecedent basis because only one marking element has been positively claimed in claim 1,

Claim 7: Perhaps applicant should replace "drag" in line 3 with --friction--. Is this a proper interpretation of the invention?

Claim 8: A) Perhaps applicant should replace a second occurrence of "an end" in lines 2-3 with -another end-- in order to clearly describe the invention,

B) "said at least one button" in line 3 lacks antecedent basis.

Claim 10: Perhaps applicant should replace "transversely" in line 3 with --perpendicular--, since, according to the drawings, the levels are positioned in the same plane. Is this a proper interpretation of the invention? Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Art Unit: 2859

3. Claim 7 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In this case, although the particular material to make the protective layer has been described in the specification, the limitation stating that the material has a low coefficient of drag has not been described in the specification.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Karon (U.S. 5867917).

Karon discloses a device in the field of applicant's endeavor comprising, a marking element 60 attached to a flexible body 44 so as when pressing on the marking element in a horizontal direction toward a wall or the like, and thus, inherently, displacing a portion of the flexible body (flexible portion) 54, the marking element will make a mark on the wall. Karon also discloses a push button 62.

Art Unit: 2859

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Karon in view of Gruenberg et al. (U.S. 6049991) [hereinafter Gruenberg].

Karon discloses the device as stated above in paragraph 5.

Karon does not disclose a handle.

Gruenberg discloses a device in the field of applicant's endeavor comprising a body 26 having a handle 44, the handle is positioned at an end opposite to another end where a marker 42 is located.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add a handle, as taught by Gruenberg, to the device disclosed by Karon, so as to allow the user to obtain a good control of the device by holding the handle.

8. Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karon in view of Fenley, Jr. (U.S. 5933973) [hereinafter Fenley].

Karon discloses the device as stated above in paragraph 5.

Karon does not disclose levels.

Art Unit: 2859

Fenley discloses in Fig. 2 a device in the filed of applicant's endeavor comprising levels 32 and 36 positioned perpendicular to each other in order to align a frame in both, vertical and horizontal, directions.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add a levels, as taught by Fenley, to the device disclosed by Karon, so as to allow the user to properly position the picture on a wall relative to the vertical and horizontal axes.

Information Disclosure Statement

9. The foreign references 0812661, 4128472 have not been considered by Examiner since they ^{were} ~~are~~ not provided with a concise explanation or English transcript.

Allowable Subject Matter

10. Claims 3-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices.

Art Unit: 2859

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices.

12. Any inquiry concerning this communication should be directed to Examiner Verbitsky who can be reached at (703) 306-5473, Monday through Friday, 7:30 to 4:00 ET.

Any inquiry of general nature should be directed to the Group receptionist whose telephone number is (703) 308-0956.

GKV

February 27, 2002



Diego Gutierrez

Supervisory Patent Examiner

TC 2800